

CLEOTILDE PADILLA

IBLA 80-807

Decided February 6, 1981

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting Class 1 color-of-title application NM 37932.

Affirmed.

1. Patents of Public Lands: Effect

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Applications for land, title to which has passed from the United States by issuance of a legal patent, must be rejected.

APPEARANCES: Cleotilde Padilla, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Cleotilde Padilla has appealed from a decision, dated June 30, 1980, of the New Mexico State Office, Bureau of Land Management (BLM), rejecting her July 12, 1979, application, designated NM 39732, for a 2.56-acre portion of public land in sec. 38, T. 28 N., R. 12 E., New Mexico principal meridian, pursuant to the Color of Title Act of December 22, 1928 (45 Stat. 1069), as amended, 43 U.S.C. § 1068 (1976).

The application was filed as a Class 1 claim under the Act. A Class 1 claim is allowable only where it is shown to the satisfaction of the Secretary of the Interior:

[t]hat a tract of public land has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part has been reduced to cultivation.

The BLM decision, not addressing the color-of-title issue, rejected appellant's application in its entirety because the land applied

for was within tract 38 and in direct conflict with Recreation and Public Purpose (R&PP) patent 30-71-0023, located in sec. 38, T. 28 N., R. 12 E., and issued to the village of Questa, New Mexico on January 6, 1971.

On appeal, appellant asserts that the claim was purchased by her husband in 1944, and that property taxes had been paid every year since the purchase. ^{1/} Appellant states that she became aware of a conflict of ownership in 1965 when, in the process of obtaining a title abstract, she found that BLM was offering the land for sale. In the ensuing correspondence between appellant and BLM she was informed that the land was patented to the village of Questa, and advised to file a color-of-title application.

[1] The controlling circumstances in this case are that a land patent was issued to the village of Questa, New Mexico, on January 6, 1971, for the land described in the color-of-title application. The effect of the issuance of a legal patent, even by mistake or inadvertence, is to transfer the legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior. Applications for land, title to which has passed from the United States by issuance of a legal patent, must be rejected. Robert Dale Marston, 51 IBLA 115 (1980); Federal American Partners, 37 IBLA 330 (1978); State of Alaska, 35 IBLA 140 (1978); Fernie M. Rogers, 29 IBLA 192 (1977).

Since a land patent has issued, the appellant's arguments are not properly the subject of further determination by this Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

^{1/} The records supplied by appellant show that the land in question was deeded to Leroy and Shirley Padilla in 1952. However, the questions of appellant's right to apply, and her standing to appeal, are avoided by our holding with regard to the jurisdictional issue.

